

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

DARLENE CASTILLO,

Petitioner,

vs.

No. CIV 18-0052 JB/KBM

ATTORNEY GENERAL OF THE STATE
OF NEW MEXICO,

Respondent.

MEMORANDUM OPINION AND ORDER DENYING
MOTION TO PROCEED IN FORMA PAUPERIS

THIS MATTER comes before the Court on Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed on January 17, 2018 (Doc. 2)(“IFP Motion”). For the reasons explained below, the Court will deny Petitioner Darlene Castillo’s IFP Motion.

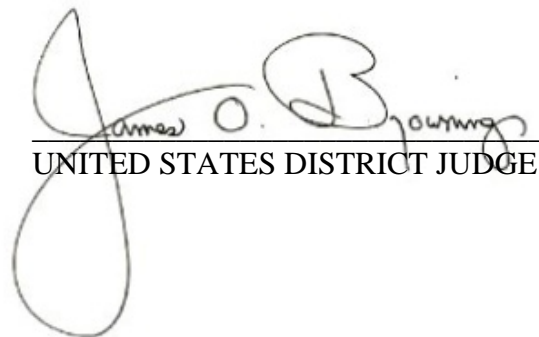
Title 28 of the United States Code, § 1915(a), provides that the Court may authorize the commencement of any suit without prepayment of fees “by a person who submits an affidavit that includes a statement of all assets the person possesses that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). This statute “is designed to ensure that indigent litigants have meaningful access to the federal courts.” Neitzke v. Williams, 490 U.S. 319, 324 (1989). However, proceeding in forma pauperis in a civil case “is a privilege, not a right -- fundamental or otherwise.” White v. State of Colorado, 157 F.3d 1226, 1233 (10th Cir. 1998)(quoting Rivera v. Allin, 144 F.3d 719, 724 (11th Cir. 1998)). While a litigant need not “be absolutely destitute to enjoy the benefit of the statute,” the litigant must provide evidence demonstrating that he or she “cannot . . . pay or give a security for the costs . . . and still be able to

provide for himself [or herself] and dependents with the necessities of life.” Adkins v. E.I. DuPont de Nemours & Co., 335 U.S. 331, 339 (1948).

The filing fee in the present case is five dollars. See 28 U.S.C. § 1914(a). According to the financial information that Castillo submitted, she has \$40.30 available in her inmate account. See IFP Motion at 3. Because Castillo has sufficient funds available to prepay the five-dollar filing fee, the Court will deny her IFP Motion.

Castillo must pay the five-dollar filing fee within thirty days of the date of entry of this order or show cause for her failure to do so. Failure timely to pay the filing fee, or to show cause, may result in the dismissal of this action without further notice.

IT IS ORDERED that: (i) the Petitioner’s Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, filed on January 17, 2018 (Doc. 2) is denied; and (ii) the Petitioner must submit the five-dollar filing fee, or show cause for her failure to do so, within thirty days of the date of entry of this order.



UNITED STATES DISTRICT JUDGE

Parties:

Darlene Castillo
Springer Correctional Facility
Springer, New Mexico

Plaintiff pro se